

the mortgage is in compliance with the underwriting and the appraisal standards set forth in this part, and that it meets all requirements applicable to the Program. FHA may require additional certifications by the mortgagee to ensure compliance with such additional standards as the FHA deems necessary given the specific mortgage transaction presented.

(b) *Mortgagor's liability for repayment.*

(1) The mortgagor shall provide a certification to FHA that the mortgagor has not:

(i) Intentionally defaulted on the mortgagor's existing mortgage(s), or any other debt; or

(ii) Knowingly or willfully and with actual knowledge furnished material information known to be false for the purpose of obtaining the mortgagor's existing mortgage(s).

(2) The mortgagor shall provide any other certifications that FHA may otherwise require.

(3) A mortgagor obligated under a Program mortgage shall agree in writing, on a form approved by the Board, to be liable to pay to FHA any Direct Financial Benefit achieved from the reduction of indebtedness on the existing senior and subordinate mortgages that are being refinanced under the Program if he or she makes a false statement or other misrepresentation in the certifications and documentation required for Program eligibility, including but not limited to the certifications required under section 257(e)(1)(A)(i) of the Act.

(c) *Mortgagee in violation of Program requirements.* (1) If the mortgagee holds a Program mortgage that it originated and/or underwrote, and FHA finds that the mortgagee violated the Program requirements, FHA is prohibited from paying FHA insurance benefits to that mortgagee.

(2) If the mortgagee no longer holds the Program mortgage that it originated and/or underwrote, FHA will pay the insurance claim to the mortgagee presently holding the Program mortgage (if all other requirements of the contract for mortgage insurance are met and the present holder did not participate in the violation of Program requirements) and shall seek indem-

nification from the non-holding mortgagee.

(d) *FHA insurance.* A mortgage is eligible for insurance if the mortgagee submits a complete case binder within such time period as the Board prescribes. The binder shall include evidence acceptable to the Board that the mortgage is current.

(e) *Mortgagor failure to make first mortgage payment.* FHA shall not pay a mortgage insurance claim to any mortgagee if the first total monthly mortgage payment is not made within 120 days from the date of closing of the mortgage. The mortgagee shall not, directly or indirectly, make all or a part of the first total monthly mortgage payment on behalf of the mortgagor. The mortgagee is prohibited from escrowing funds at closing for all or part of the first total monthly mortgage payment.

[73 FR 58420, Oct. 6, 2008, as amended at 74 FR 621, Jan. 7, 2009]

**§4001.118 Equity sharing.**

(a) *Initial Equity.* For purposes of section 257(k)(1) of the Act, the initial equity created as a direct result of the origination of a Program mortgage on a property, as calculated by the Program mortgage lender, shall equal:

(1) The lesser of—

(i) The appraised value of the property that was used at the time of origination of the Program mortgage to underwrite the mortgage and to determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act; or

(ii) The outstanding amount due under all existing senior mortgages, existing subordinate mortgages, and non-mortgage liens on the property; less

(2) The original principal amount of the Program mortgage on the property.

(b) *FHA's interest.* Upon the sale or disposition of a property or Program mortgage refinancing, FHA shall calculate and be entitled to receive the portion of the initial equity (as defined by paragraph (a) of this section) set forth in section 257(k)(1) of the Act,

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subject to such standards and policies as the Board may establish.

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### § 4001.120 Appreciation sharing or upfront payment.

(a) *Calculation of appreciation.* For purposes of section 257(k)(2) of the Act, the amount of the appreciation in value of a property securing a Program mortgage that occurs between the date the mortgage was insured under section 257 of the Act and the date of any subsequent sale or disposition of the property shall be equal to the following, as such amounts of appreciation may be established to the satisfaction of FHA:

(1) In the case of—

(i) A sale of the property to one or more persons none of which is a related party of the mortgagor, the gross proceeds from the sale of the property; or

(ii) A disposition of the property or the sale of the property to a related party of the mortgagor, the current appraised value of the property at the time of the disposition or sale; less

(2) The amount of closing costs, as adopted by the Board, incurred by the mortgagor(s) in connection with such sale or disposition, if any; less

(3) Seventy-five percent, as may be modified by the Board, of the actual expenditures for Capital Improvements made by the mortgagor(s) after the date of origination of the Program mortgage; and less

(4) The appraised value of the property that was used at the time of origination of the Program mortgage to underwrite that mortgage and determine compliance with the maximum loan-to-value ratio at origination established by section 257(e)(2)(B) of the Act.

(b) *HUD's interest in appreciation.* Upon sale or disposition of a property securing a Program mortgage, FHA shall be entitled to receive an amount equal to 50 percent of the appreciation in value of the property calculated in accordance with paragraph (a) of this section.

(c) *Eligibility of subordinate mortgage holders to receive a portion of appreciation in value.* The persons or entities that hold, on the date of origination of a Program mortgage, an existing sub-

ordinate mortgage on the property shall be eligible to receive a portion of FHA's interest in the appreciation in value of the property, as determined in accordance with the provisions of this section and such additional standards and policies that the Board may establish, if:

(1) The existing subordinate mortgage was originated on or before January 1, 2008;

(2) The amount of the unpaid principal and interest on such existing subordinate mortgage, as of the first day of the month in which the mortgagor made application for the Program mortgage, is at least \$2,500; and

(3) Each person holding such existing subordinate mortgage agrees, in connection with the origination of the Program mortgage, to fully release:

(i) The mortgagor(s) from any indebtedness under the existing subordinate mortgage; and

(ii) The holder's mortgage lien on the property.

(d) *Shared appreciation interest of subordinate mortgage holders.*

(1) *In general.* The eligible holder(s) of an existing subordinate mortgage on a property securing a Program mortgage shall be eligible to receive, subject to paragraph (c)(3) of this section, an interest in FHA's interest in the appreciation in the value of such property up to the amount set forth in the Appendix to this part.

(2) *Form.* The interest of an eligible holder of an existing subordinate mortgage under paragraph (d) of this section is evidenced in a shared appreciation certificate or other documentation to be issued by, or on behalf of, HUD.

(3) *Multiple subordinate liens.* If there is more than one eligible existing subordinate mortgage on a property securing a Program mortgage, the interests of such eligible existing subordinate mortgages under paragraph (d)(1) of this section shall have priority among each other in the same order of priority that existed among the existing subordinate mortgages on the date of origination of the Program mortgage.

(4) *Distribution of appreciation interest to subordinate mortgage holders.* Upon the sale or disposition of a property securing a Program mortgage other than